IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.6417/07
Babu Lal Sharma Vs. State of Raj. & Ors.

23.08.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Aslam Khan for petitioner.
Shri B.K. Sharma, Addl. GA for State.
Shri Mukesh Joshi for respondent.

Heard learned counsel for the parties.

The petitioner has challenged the order passed by the Estate Officer dated 14.2.2006 and the order dated 20.4.2007 passed by the SDO, Amer as well as the order dated 13.8.2007 passed by Additional District Judge No.1, Jaipur City, Jaipur. The SDO in passing the aforesaid orders was acting in the capacity of Estate Officer under the provisions of Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act. The application was made by the respondents before the SDO with the prayer that petitioner herein be declared as a trespasser and be directed to be evicted

from the shop in question which is said to be situate in Galeb Chowk of Amer. In another application, which was disposed of by the second order, the prayer was made that the petitioner be further directed to pay compensation and damages during the period of unauthorised occupation of the said shop.

The Estate Officer in the first order held that the petitioner has failed to prove that he was tenant of the respondents and that neither any rent note or any other agreement has been brought on record so far as the judgment passed by the SDO is concerned. All that which was directed in that order was that the petitioner shall not be disposed of except by due process of law. In the second order, the Estate Officer directed the petitioner to make payment of sum of Rs.64,237/-as damages / compensation and with interest at the rate of 18% thereupon and further directed him to pay a sum of Rs.3,574 thus a total loan of Rs.67,921/- was given. Petitioner preferred

appeals against both the aforesaid orders under Section 9 of the Act of 1964 which have been disposed of. While the appeal filed against the first order was dismissed unconditionally, the appeal filed against the second order was partly allowed and it was directed that the respondent shall be entitled to recover the damages / compensation only for the period of 3 years immediately preceding the date of their submitting application before the Estate Officer on 10.11.1998 at the rate of 5.50 per month.

I have heard Shri Aslam Khan, the learned counsel for the petitioner and Shri B.K. Sharma, the learned Addl. Government Advocate and Shri Mukesh Joshi for respondent.

Shri Aslam Khan, the learned counsel for the petitioner argued that notice served upon the petitioner under Section 4 of the Act was a defective notice because it did not specify the grounds on which the orders for eviction was proposed to be made and therefore

this vitiated the entire proceedings. The learned counsel for the petitioner in support of his arguments relied on the judgment of this Court in the case of Gokul Vs. Rajasthan Muslim Wakf Board & Ors., AIR 1999 (Raj.) 90. It was argued that the petitioner cannot be treated as a trespassers because he had been continuously making payment of the rent. The respondents accepted the rent upto 1978 and beyond that period, when they stopped accepting the rent, the petitioner had been depositing such rent with the Court in accordance with the provisions of Section 19A of the Rent Control Act, 1950. It was argued that petitioner by a civil suit in the Court of Additional Civil Judge (Jr.Div.) No.1, Jaipur District Jaipur which was decreed by judgment of the Court on 21.1.1995 in which it was directed that petitioner shall not be dispossessed without following due process of law. The tenancy of the petitioner was never terminated and therefore his character always remained that of

tenant. Learned counsel for the petitioner also argued that another tenant in similar circumstances namely Shri Ghanshyam Sindi has been accommodated by giving him an alternative shop though outside Amer fort whereas the petitioner has been discriminated against in as much as he has not been accorded similar treatment. The petitioner being in possession of the shop since 1967 and this shop being the only source of his livelihood, the respondent ought to take pragmatic view of the matter.

On the other hand Shri B.K. Sharma, learned Additional Government Advocate, opposed the writ petition and argued that the respondents never treated the petitioner as tenant and even as per the own admission of the petitioner, no rent was accepted by them from the petition after 1978. Even if the petitioner has deposited certain amount in the court under section 19-A of the Act of 1950, that would not make him the tenant of the respondents as he did so on his own. Neither any rent note was

produced nor was any agreement to substantiate the factum of tenancy. Even otherwise, the Act of 1950 not being applicable to this nature of the properties, the deposits voluntarily made by the petitioner would be merely a superfluous exercise. For the judgment passed by the Civil Court, it was argued that in that judgment only direction that was given is that the petitioner shall not be dispossessed except by due process of law and therefore the respondents have followed the due process. When the petitioner approached the appellate Court against the judgment of the Estate Officer, the order was upheld. The fact about the character of the petitioner not being a tenant has thus been concurrently decided against him by both the courts which is not open to re-appreciation by this court. The order passed by neither of the authorities below suffer from any such error which may warrant interference in this court. It was, therefore, prayed that the writ petition be dismissed.

Having heard the learned counsel for the petitioner, I find that the question whether petitioner was tenant of the respondents or not has been decided on the basis of material which was produced before the estate officer. The estate officer has come to hold that neither any rent receipt nor any agreement was produced and no evidence has been brought on record that whether the deposit of rent made by the petitioner beyond the year 1978 was made with the consent or agreement of the respondents. As regards the compensation or damages it may be noted that that relief has already been granted to the petitioner by the appellate court whereby the arrears of the damages falling outside the period of limitation has been disallowed and the rent @ Rs.5.50 per month for the period of three years only has been allowed. This amount when calculated comes to about Rs.900/- in all. From that aspect also, I find that the grievance of

the petitioner has been substantially remedied.

In so far as the judgment cited by the learned counsel for the petitioner in Gokul, supra is concerned that judgment turned on its own facts where no notice whatsoever was received by the aggrieved person from the Estate Officer declaring him to be trespasser and certified copy of the order passed by the Estate Officer was served upon the tenant declaring him a treaspasser in the Wakf Property and asking to pay damages. That judgment would hardly have any application to the facts of the present case. On the question of alternative accommodation, it has been clarified by learned Additional Govt. Advocate, that was given in only two cases and for the purpose of sale of `prasad'. I would not like to deal with this aspect of the matter, because it is for the respondents to consider the grievance of the petitioner on that aspect. If the petitioner makes any such representation, it is expected of the respondents to consider

the same and decide the same in accordance with law.

The writ petition which lacks in merit is dismissed accordingly.

(Mohammad Rafiq),J.

Rs/-